

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1472

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
JAMES D. HODGSON, Secretary of Labor,
United States Department of Labor,

Plaintiff-Appellee,

-and-

ANGEL ROMAN,

Intervenor-Respondent,

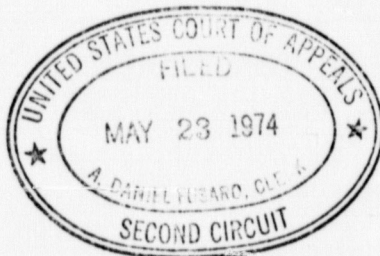
v.

INTERNATIONAL UNION OF ELECTRICAL, RADIO
AND MACHINE WORKERS, AFL-CIO, AMALGAMATED
MACHINE, INSTRUMENT AND METAL LOCAL 485,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X
JOINT APPENDIX



VLADECK, ELIAS, VLADECK & LEWIS
Attorneys for Appellant
1501 Broadway
New York, New York 10036
239-4200

HAROLD J. FRIEDMAN, ESQ.
Assistant United States Attorney for
the Eastern District of New York
Attorney for Plaintiff-Appellee,
Secretary of Labor
225 Cadman Plaza East
Brooklyn, New York
596-3566

PAGINATION AS IN ORIGINAL COPY

JOINT APPENDIX

TABLE OF CONTENTS

<u>DOCUMENT</u>	<u>PAGE</u>
DOCKET ENTRIES	A 1 - 3
FINDINGS OF FACT AND ORDER FOR JUDGMENT, DATED MARCH 13, 1974 (JUDGE DOOLING)	A 4 - 23
ORDER, DATED APRIL 5, 1974 (JUDGE DOOLING)	A 24 - 25
NOTICE OF APPEAL, DATED APRIL 15, 1974	A 26
LOCAL 485 CONSTITUTION, ARTICLES XI AND XVI	A 27 - 28
LETTER OF LOCAL 485 PRESIDENT PERTAINING TO APPOINTMENT OF HAMILTON ARCHER AS BUSINESS MANAGER, DATED SEPTEMBER 29, 1969	A 29
LOCAL 485's "LABOR ORGANIZATION ANNUAL REPORT" FOR FISCAL YEAR 1970, 1969	A 30
PERTINENT STATUTORY SECTIONS OF THE L.M.R.D.A.	A 31 - 40
PERTINENT SECTIONS OF THE SECRETARY OF LABOR'S REGULATIONS	A 41 - 42

JAMES D. HODGSON etc., vs. INTERNATIONAL UNION OF ELECTRICAL WORKERS, etc.

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
8-12-70	Complaint filed. Summons issued.	1 153
9-1-70	Summons returned and filed. Deft svyd on 8-28-70.	2
11-17-70	ANSWER of deft filed. (Affid of svr by mail on 9-9-70)	3
12-11-70	Before DOOLING, J. - Case called - Pre-trial conference held and concluded.	
12-16-70	By DOOLING, J. - CONFERENCE MEMORANDUM & ORDER FILED. Counsel are to report on progress on or before Jan 11, 1961. It is So Ordered. (P/C mailed to attys) <i>WIS</i>	4
1-28-71	Pltff's request for admissions filed.	5
2-8-71	Deft's response to request for admissions filed.	6
1-22-73	Before DOOLING, J. - Case called for pretrial conference. Conference held & concluded. Scheduled for trial week of March 12, 1973.	
1-25-73	By Dooling, J. - Conference Memo & Order dtd 1/24/73 filed.	7
2-6-73	Notice of motion and memo in support to intervene as a plttf ret 3-12-73 filed.	8/9
3-2-73	By DOOLING, J. - Order dtd 3-12-73 that Angel Roman have leave to intervene on the complaint annexed to his motion, etc filed. (p/c mailed to attys) <i>WIS</i>	10
3-14-73	Before DOOLING, J. - Case called. Trial ordered and begun. Trial continued to 3-15-73.	
3-15-73	Before DOOLING, J. - Case called. Trial resumed. Govt rests subject. Trial continued to 3-16-73.	
3-16-73	Before Dooling, J. - Case called on trial - Trial resumed - Deft. rests - Both sides rest. Trial Decision rendered. Pltffs. proposed findings by 4/16/73.	
3-19-73	Defts. trial memorandum filed.	11
3-20-73	Pltffs. trial memorandum filed.	12
3-27-73	Stenographer's transcripts dtd March 14, 15, 16, 1973 filed.	13/14/15
5-1-73	Post-trial findings of fact & conclusions of law proposed by plttf Secretary of Labor filed.	16
5-31-73	Deft's post-hearing memo filed.	17
5-31-73	Post-trial findings of fact, etc. filed.	18
6-5-73	Pltff's post-trial memorandum of law filed.	19
7-14-74	By DOOLING, J. - Findings of fact and order for judgment dtd 3-13-74 that plttf is entitled to judgment that Hamilton Archer was not eligible for nomination & that plttf settle for of judgment within 20 days from date of this order on 5 days notice (p/c mailed to attys) <i>WIS</i>	20

Continued

HODGSON, et ano vs. INTERNATIONAL UNION OF ELECTRICAL WORKERS

[illegible]

Apr. 26, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

JAMES D. HODGSON, Secretary of
Labor, United States Department
of Labor, :

Plaintiff, :

70 C 988

-and- :

ANGEL ROMAN, :

Intervenor, :

FINDINGS OF FACT
and

ORDER for JUDGMENT

-against- :

INTERNATIONAL UNION OF ELECTRICAL,
RADIO, AND MACHINE WORKERS, :
AFL-CIO, ALMAGAMATED MACHINE,
INSTRUMENT AND METAL LOCAL 485, :

Defendant. :

----- -X

The following are the findings of fact herein:

1. Plaintiff brings this action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519 et seq., 29 U.S.C. 401 et seq.), hereinafter referred to as the Act.

2. Jurisdiction of this action is conferred upon the Court by section 402(b) of the Act (29 U.S.C. 482(b)).

3. Defendant is, and at all times relevant to this action has been, an unincorporated association maintaining its principal office at 160 Montague Street, County of

2.

Kings, City of New York, State of New York, within the jurisdiction of this Court.

4. Defendant is, and at all times relevant to this action has been, a local labor organization engaged in an industry affecting commerce within the meaning of sections 3(i), 3(j) and 401(b) of the Act (29 U.S.C. 402(i), 402(j) and 481(b)).

5. Defendant is, and at all times relevant to this action has been, chartered by and subordinate to the International Union of Electrical, Radio and Machine Workers, AFL-CIO, hereinafter referred to as the International, an international labor organization engaged in an industry affecting commerce within the meaning of sections 3(i) and 3(j) of the Act (29 U.S.C. 402(i) and 402(j)).

6. Defendant, purporting to act pursuant to and in accordance with the Constitution of the International and its own Constitution, conducted an election of officers on February 24, 1970, which election was subject to the provisions of Title IV of the Act (29 U.S.C. 481 et seq.).

7. On February 26, 1970, Angel Roman, a member in good standing of defendant, along with eight other members

3.

protested the conduct of defendant's February 24, 1970 election of officers to defendant's Executive Board. By letter dated April 20, 1970, Leo Cutro, defendant's Recording Secretary advised Roman that the Executive Board had adopted the recommendation of its investigating committee that the protest be denied. By registered letter dated April 30, 1970, Mr. Roman and the other members appealed the decision of the defendant's Executive Board to William Bywater, Executive Board, District 3, IUE. Having invoked the remedies available under the International Constitution for three calendar months following the election without receiving a final decision, Angel Roman, acting pursuant to and in accordance with section 402(a) of the Act (29 U.S.C. 482(a)), filed a complaint with the plaintiff on June 15, 1970.

8. Plaintiff investigated the complaint pursuant to section 402(b) of the Act (29 U.S.C. 482(b)), and found that there was probable cause to believe that a violation of Title IV of the Act had occurred during the conduct of the defendant's election and that it had not been remedied at the time of institution of this action.

9. Plaintiff's Exhibit 1 in evidence entitled DRAFT COPY OF REVISED CONSTITUTION OF LOCAL 485, consisting of 13 pages, is a true copy of defendant's Constitution approved by the International Convention in 1963, and its provisions were in effect and applicable to the election of officers conducted by defendant on February 24, 1970.

10. Article XI of such Constitution provided in part:

"Section 1. Nominations for officers of the Local (namely, President, ... Business Manager ...) ... shall be made from the floor at a nominations meeting of the Local in December of each alternate year beginning with December of 1963....

"Section 7. ... A Local Organizer or Business Agent shall not be eligible for election to any office in the Local while he is an Organizer or Business Agent.

* * *

5.

"Section 10. The elections shall be held in the month of January, 1964 and in the month of February 1966 and in February of alternate years thereafter, following the nominations, at a date, time and place or places to be determined by the Local Executive Board. In the event a vacancy occurs in any office or elected position, the vacancy for the unexpired term shall be filled by nomination and election at the next regular meeting of the Local.

Nominations and elections to fill vacancies shall be conducted in accordance with the procedures of this Article insofar as applicable.

"Section 17. Any member occupying an elected office or position may be nominated to succeed himself."

11. There is no express provision of the Constitution authorizing the President to appoint or the Executive Board to choose, elect or ratify the appointment of a Business Manager of the Local until the next regular election of officers. Other than Article XI, Section 10,

6.

there is no express provision for the holding of "special" elections, and the express provision in Article XI, Section 10, for filling an office that falls vacant between elections requires a vote at a regular membership meeting. Literally, there is no provision for an office left vacant at a preceding regularly scheduled and conducted election of officers.

12. Plaintiff's Exhibit 2 in evidence is a true copy of a letter from Charles Fay, defendant's President, to all shop chairmen and shop committee members, dated September 29, 1969, advising them that on September 26, 1969, the officers of the Local had unanimously designated Hamilton Archer as temporary Business Manager until the next Local Election, and that he would direct the staff and carry out all of the functions normally performed by the Business Manager of the Local Union.

13. Hamilton Archer was at the Union office on September 26, 1969, had earlier discussed his taking on the job of Business Manager with the officers, and was told on September 26, 1969, that he had been appointed Business Manager.

7.

14. Copies of the letter of September 29, 1969 (which is marked "Please Post") were posted in the shops that Hamilton Archer handled at least.

15. Plaintiff's Exhibit 3 in evidence is a true copy of the minutes of defendant's membership meeting held on Thursday, December 18, 1969. At that meeting, Mr. Archer was nominated for the Office of Business Manager. He was the sole nominee and he accepted the nomination. His nomination was approved by Charles Fay, President of the Local.

16. At the December 18, 1969 meeting Angel Roman was nominated for the Office of Recording and Correspondence Secretary, and the nomination was disallowed by President Charles Fay because Mr. Roman was still a business agent.

17. Plaintiff's Exhibit 4 in evidence is a true copy of the ballot used in defendant's February 24, 1970 election of officers. It provides space for voting for Hamilton Archer as the sole candidate for the office of Business Manager.

18. Plaintiff's Exhibit 5 in evidence is a true copy of a letter dated February 26, 1970, from defendant's

Tellers Committee which states the official results of defendant's February 24, 1970 election of officers. It states that Hamilton Archer was elected Business Manager until February 28, 1972. The letter is addressed to all members.

19. The next previous Business Managers, Mr. Cameron and Mr. Eisenberg were both "appointed" by the officers and approved by the Executive Board before they were elected at a biennial election by vote of the membership.

20. Mr. Archer was first employed by Local 485 as a business agent in 1966.

21. Absent illness, vacation, or exceptional circumstances, it had been the practice in Local 485 to assign each shop to one specific Business Agent and that Business Agent is exclusively responsible for servicing the shops assigned to him. However, in the nature of the operation of Local 485 emergencies occurred almost on a daily basis, and required both bringing extra Business Agents in to a shop to help, and assigning shops on a temporary basis to Business Agents other than the regularly

assigned one when the regular Agent was engaged on a special situation.

22. As Business Agent, Mr. Archer spent about 90% of his time servicing the shops assigned to him and the remaining time was spent on other matters such as organizing new members.

23. The Business Manager of the Local spends about 70 to 80% of his time in over-seeing the work of the Local and in developing programs for it and the amount of time spent on servicing shops would depend on how much the staff members called on the Business Manager for assistance.

As Business Manager Mr. Archer serviced some shops on a regular basis but it took a minor fraction of his time.

24. On September 26, 1969, Mr. Archer was unanimously appointed to the office of Business Manager by the officers of Local 485 at a closed-door meeting on the recommendation of President Charles Fay.

25. Mr. Archer performed the duties of and acted as a Business Agent up to the time of his appointment to the office of Business Manager on September 26, 1969.

26. Before his September 26, 1969, appointment to

10.

the office of Business Manager, Mr. Archer had avowed an interest in becoming Business Manager.

27. On September 26, 1969, there were about 6000 members of Local 485.

28. The approximately 6000 members of Local 485 were not informed before September 26, 1969 that Mr. Archer was to be appointed to the office of Business Manager.

29. Before Mr. Archer was appointed Business Manager, the 6000 members of Local 485 had no opportunity to participate in or act on the appointment of Mr. Archer.

30. After September 26, 1969, but before the October 18, 1969 Executive Board meeting, an announcement of the appointment of Mr. Archer to the office of Business Manager appeared in the official Local 485 Newsletter.

31. The ~~FORN~~ official Local 485 letter dated September 29, 1969, Exhibit 2, announcing Mr. Archer's appointment as Business Manager, was prepared and sent to all shop chairmen and committee members with the request that it be posted in accordance with the normal procedure for notifying the membership of important Local matters.

11.

32. On October 18, 1969 the approximately 75 members of the Executive Board of Local 485 ratified Mr. Archer's appointment to the office of Business Manager.

33. The union membership at large and the Board members were not notified before the October 13, 1969 Executive Board meeting that Mr. Archer's appointment would be acted upon at said meeting.

34. No challenge to Hamilton Archer's September 1969 appointment as Business Manager was filed with the Union, nor was any timely complaint filed with the Secretary of Labor alleging that Hamilton Archer's September 1969 appointment violated the terms of the Local 485 Constitution or in any respect violated Title IV of the Act.

35. The office of Business Manager had been unfilled from Eisenberg's resignation in 1967 through September 1969; in part because of the Gretsche strike, increased burdens on the Local President of carrying out of President and Business Manager, the combined functions, and of the vacation plans of the Local President it became, in the President's view, advisable that the vacancy be filled.

36. In selecting a Business Manager, the leadership in the Local considered it advisable to select a

12.

person who, having the required technical negotiating and managerial qualifications would be suited to deal with the unusual ethnic makeup of Local 485.

37. From September 1, 1969 to February 24, 1970, the officers of Local 485, including President Charles Fay, were concerned with racial tensions and related ethnic considerations in the Union.

38. From September 1, 1969 to February 24, 1970, the officers of Local 485, including President Charles Fay, were concerned with "trying to make it more livable for all sections of the membership" and, while Local management was interested in arriving at a "balanced" ticket of candidates in the 1970 elections, it was the nominating meeting that actually made that determination.

39. Mr. Archer did not resign from the position of Business Agent before his appointment on September 26, 1969, as Business Manager.

40. Mr. Archer did not resign as Business Agent before his nomination on December 13, 1969, for the office of Business Manager.

41. Mr. Archer did not resign as Business Agent

before he was elected Business Manager on February 24, 1970, nor did he resign from the position of Business Agent upon or following that election.

42. During the period of his appointment to the office of Business Manager from September 26, 1969 to February 24, 1970, Mr. Archer did not hire any full time employees, but he hired Eugene de Jesus to assist on the picket line for the duration of the Gretsch strike.

43. During the period of his appointment as Business Manager from September 26, 1969 to February 24, 1970, Mr. Archer did not fire any employees.

44. There was not an ordered and systematic reassignment of shops theretofore serviced by Mr. Archer when he was appointed Business Manager.

45. Mr. Archer had been servicing about ten to not more than about seventeen shops before he was appointed Business Manager.

46. The effort to service adequately and to hold the Fedders shop for the Local resulted in a confused and uncertain array of shops and business agents in a good part of 1969; if there had been a stable table of organization of shop servicing personnel before the Fedders shop

14.

became a major problem for the Local, it was deranged in the period extending well into 1969, and it is not possible to find with certainty what shops assigned or reassigned to Business Agent Ernest Biggs in latter 1969 reflected transfers of shops from Mr. Archer to Mr. Biggs in consequence or in recognition of Mr. Archer's appointment as Business Manager.

47. During the period of his appointment as Business Manager from September 26, 1969 through February 24, 1970, Mr. Archer continuously and uninterruptedly serviced at least nine shops in the same manner and fashion that he had serviced these shops prior to his appointment to the office of Business Manager.

48. Previous Business Managers of Local 485 serviced some shops substantially as Business Agent for those shops during their period of service as Business Manager.

49. After Mr. Archer's appointment as Business Manager he reassigned Business Agents Hernandez and Roman exclusively to organizational work.

50. There were six Business Agents on the Local's staff when Mr. Archer was appointed Business Manager.

13.

51. During the period from September 26, 1969 up to and including the date Mr. Archer was elected Business Manager on February 24, 1970, neither Mr. Archer nor any other union official hired any Business Agent to replace Mr. Archer.

52. The scale of the Locals' shop service activities contracted after the Fedders' bargaining unit was chartered as a new Local, and an effort was made to shift Local activities in the direction of recruiting new members and organizing new shops.

53. During the period from his appointment on September 26, 1969, through February 24, 1970, Mr. Archer continued to receive the same salary that he had received as Business Agent.

54. There is evidence that Mr. Archer, when he was appointed, was offered and declined the Business Manager's salary.

55. After he was appointed Business Manager, Mr. Archer moved out of the staff room occupied by Business Agents and thence forward shared office space with the Local's President, as had his predecessors Cameron and Eisenberg.

16.

56. The testimonial dinner for Mr. Archer on November 14, 1969, had wide Local participation, and it was attended by more than 500 of his supporters.

57. After he was appointed Business Manager, Mr. Archer served as delegate ex officio of the Local to special International and District conventions on the General Electric strike. Later Mr. Archer took an active part, within the Local, in mobilizing G.E. strike support. 485,

58. Local/by its then President, Santiago Torres, and Treasurer, Thelma Luckie, prepared and submitted to the Secretary of Labor, the Local's "Labor Organization Annual Report" (Exhibit 18) dated June 8, 1971 and covering the fiscal year 1970. The Report does not name Mr. Archer as having been an officer of Local 485 for the calendar year 1969.

DISCUSSION

The question is whether Hamilton Archer was one of the Business Agents of the Local when he was nominated and elected Business Manager. That would not necessarily turn on whether or not he was also the appointed Business Manager but, because each of the officers, it appears, functioned

17.

to some extent in servicing one or more shops substantially as a Business Agent would (Tr.87-89), it is well to consider whether Mr. Archer became Business Manager by appointment.

The Constitution contains no provision other than Article XI, Section 10, for filling offices that fall vacant between regular biennial elections, and it appears to contain no provision literally dealing with the filling/an^{of} office intentionally left vacant at a regular biennial election. There appears to be no provision for calling "special" elections, although there is a clear provision for calling special membership meetings (Article XVI, Section 3), and the president has authority to call special meetings of the Executive Board and Officers, (Article IV, Section 3). Hence Article XVI, Section 1, read with Article XI, Section 10, must be taken as providing that where an office falls vacant, it is to be filled at the next regular membership meeting (in February or September or December) by nomination and membership vote. While it is possible, therefore, to say that filling an office intentionally left vacant is an unprovided-for case (arguably allowing for improvisation and the growth of a "customary rule" permitting

18.

executive appointment), such an interpretation would not do justice to the basic scheme of solidly lodging the power to appoint officers in the membership and in them exclusively.

It follows that Mr. Archer was not lawfully appointed to hold office as Business Manager.

The next question, then, is, whether any relevant consequence flows from the fact that he assumed duties of the office of Business Manager and despatched work of that office in the September to February period. It may well be that in third party relations his "de facto" office holding would make his acts valid acts of the Local enforceable against it: his appointment, the Local's acquiescence in it might be enough. But the present one is a question of the internal affairs of the Union, a matter of qualification to hold office and to claim a right to continue in office by virtue (in some part) of an incumbency that, as against the membership, was illegal. Since the constitutional provisions that were ignored were designed to secure the electoral interests of the members,

19.

a "de facto" incumbency as Business Manager could not be relied upon to validate an election by arguing that Mr. Archer was in fact the Business Manager primarily and as such eligible to stand for office, and that he discharged Business Agent duties only in the subordinate way that other officers discharged such duties.

Since for nomination and election purposes Mr. Archer had to stand on the title, if any, that was rightfully his, and he was regularly employed and paid by the Local as a full-time salaried employee and was eligible to and was functioning in the performance on a substantial basis of the duties of a Business Agent, he was for electoral purposes a Business Agent whether or not he also discharged some of the duties normally belonging to the office of Business Manager. As the findings of fact demonstrate, there are ample grounds for concluding that, so far as the question is one of mixed law and fact, the Local can be held to have recognized that Mr. Archer continued to be a Business-Agent-only as a matter of Internal Local management, record-keeping, and compensation. Hamilton Archer was, therefore, ineligible for nomination

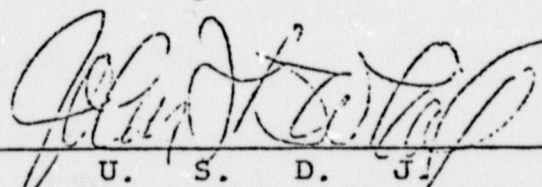
and election to the office of Business Manager and his election on February 28, 1970, was invalid.

Evidently Mr. Archer was again elected Business Manager in February, 1972. What relief is reasonable and presents a new and distinct question. appropriate at this time/ If a new election is to be held in conformity with the Constitution of the Local, it would be appropriate to hold it in September, if that be the next regular meeting. An expression of the views of counsel on the appropriate relief would be helpful.

It is, on the findings of fact herein,

ORDERED that plaintiff is entitled to judgment that Hamilton Archer was not eligible for nomination and election to the office of Business Manager of Amalgamated Machine, Instrument and Metal Local 485, International Union of Electrical, Radio and Machine Workers, AFL-CIO, and his election to that office on February 24, 1970, was invalid, and it is further

ORDERED that within twenty days from the date of this order plaintiff settle a form of judgment for appropriate specific relief on five days notice to defendant and to intervenor.
Brooklyn, New York
March 13, 1974.-


U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

JAMES D. HODGSON, Secretary of Labor,	:	
United States Department of Labor,	:	
	:	<u>ORDER</u>
Plaintiff,	:	
	:	
- and -	:	
	:	Civil Action
ANGEL ROMAN,	:	No. 70 Civ. 988
	:	
Intervenor,	:	
	:	
-against-	:	
	:	
INTERNATIONAL UNION OF ELECTRICAL,	:	
RADIO AND MACHINE WORKERS, AFL-CIO,	:	
AMALGAMATED MACHINE, INSTRUMENT AND	:	
METAL LOCAL 485,	:	
	:	
Defendant.	:	

-----X

Upon the Findings of Fact and Order for
Judgment dated March 13, 1974, it is hereby ordered
as follows:

1. At the time of the Union's next
regular meeting of the membership in September 1974,
defendant shall conduct an election for the office of
Business Manager, which election shall be under the
supervision of plaintiff, Secretary of Labor; and
2. Hamilton Archer shall resign from the
office of Business Manager at least thirty (30) days
before the scheduled election; and

3. Any Organizers or Business Agents of defendant who are going to run for the office of Business Manager must resign at least thirty (30) days before the scheduled election.

Dated: Brooklyn, New York,

April 5, 1974.

JOHN F. DOOLING, JR.
UNITED STATES DISTRICT JUDGE

JAMES D. HODGSON, Secretary of Labor,
United States Department of Labor,

Plaintiff-Respondent,

- and -

ANGEL ROMAN,

Intervenor-Respondent,

- against -

INTERNATIONAL UNION OF ELECTRICAL, RADIO
AND MACHINE WORKERS, AFL-CIO, AMALGAMATED
MACHINE, INSTRUMENT AND METAL LOCAL 485,

Defendant-Appellant.

NOTICE OF
APPEAL

Civil Action
No. 70 Civ.988

NOTICE IS HEREBY GIVEN that INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, AMALGAMATED MACHINE, INSTRUMENT AND METAL LOCAL 485, the defendant above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Findings of Fact and Order for Judgment dated March 13, 1974 and from the Order entered thereon dated April 5, 1974, whereby the election conducted by the defendant for the office of Business Manager held on February 24, 1970 was declared to be void and the conduct of a new election under the supervision of the Secretary of Labor was ordered.

Dated: New York, New York
April 15, 1974

VLADECK, ELIAS, VLADECK & LEWIS

By: s/ Sylvan H. Elias
A member of the firm

Attorneys for Defendant-Appellant
1501 Broadway
New York, N. Y. 10036

LOCAL 485 CONSTITUTION
ARTICLE XI

Section 7. No member who is an International or District Officer and receives full-time compensation for same shall be eligible for election to any office or position in this Local which carries with it financial remuneration. A Local Organizer or Business Agent shall not be eligible for election to any office in the Local while he is an Organizer or Business Agent.

Section 10. The elections shall be held in the month of January, 1964 and in the month of February 1966 and in February of alternate years thereafter, following the nominations, at a date, time and place or places to be determined by the Local Executive Board. In the event a vacancy occurs in any office or elected position, the vacancy for the unexpired term shall be filled by nomination and election at the next regular meeting of the Local. Nominations and elections to fill vacancies shall be conducted in accordance with the procedures of this Article insofar as applicable.

ONLY COPY AVAILABLE

LOCAL 485 CONSTITUTION
ARTICLE XVI

ARTICLE XVI

LOCAL MEMBERSHIP MEETINGS

Section 1. During each calendar year, regular Local membership meetings shall be held in the months of February, September and December, at a date, time and place to be determined by the Local Executive Board. The meetings shall be publicized to the Local membership at least seven (7) days prior to each meeting.

At the Local membership meeting which is held in the month of December (beginning with December, 1963 and alternate years thereafter), nominations of Local Union Officers and Executive Board members shall take place.

Elections of Local Union Officers and Executive Board members shall take place at the membership meeting which is held in the month of January, 1964 and in the month of February, 1966 and in February of alternate years thereafter, following the nominations meeting.

Section 2. The Local Membership Meeting shall be the supreme body of the Local. Its powers shall be above those of any other body of the Local, and all decisions of all other bodies of the Local may be subject to review by the Local Membership Meeting.

Section 3. Special Membership Meetings shall be called by the President if he is directed to do so by the Local Executive Board or by a regular Local Membership Meeting. The notice of Special Meetings shall be publicized to the membership at least seven (7) days prior to the meeting and shall set forth the purpose of the meeting.

CHARLES FAY
President
JOSEPH SALGUERO
Vice-President
JOHN LUCKIE
Business Manager
MICHAEL NIGRIS
Financial Secretary
JOE CUTRONCO
Gen. & Corr. Sec'y.
HAMILTON CAMERON
Catalant



AMALGAMATED MACHINE
INSTRUMENT AND METAL
LOCAL 435

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO
CAMERON HALL - 160 MONTAGUE STREET
BROOKLYN, NEW YORK 11201 • (212) 875-5645

PLEASE POST

September 29th, 1969

TO ALL SHOP CHAIRMEN AND
SHOP COMMITTEE MEMBERS

Dear Brother or Sister:

Our Local Union has not been as active in the past two years as we have been prior to that time due to the absence of a Business Manager in the Local. Our Civil Rights, Legislative and Membership activities have suffered as a result of this. The Local Officers have been discussing these matters for the past few weeks and on Friday, September 26th took an action to change this situation without any further delay.

At that time the officers with all of them present voted unanimously, on a motion made by Vice President Salguero, to designate Brother Hamilton Archer as temporary Business manager until the next Local Election. Brother Archer will direct the staff and carry out all of the functions normally performed by the Business Manager of the Local Union.

Fraternally yours,

C. Fay
Charles Fay
President

CF:ir

LABOR ORGANIZATION ANNUAL REPORT

1969

SCHEDULE 3

Name (A)	Title (B)	Status (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Other Direct and Indirect Disbursements		Total (H)
					Expenses Including Reimbursed Expenses (F)	Other Dis- burse- ments (G)	
1. Chas. Ray	Sec.	C	6294	1060			6354
2. Jose Salguero	Sec.	C	7499	1060			8559
3. Manuel Sigala	Sec.	C	7043	1030			8073
4. Leo Cutzoreo	Sec.	C	7500	1060			8560
5. Thomas Luciani	Sec.	C	1067				1067
7. Total from Additional Listings, if any							
8. Totals of lines 1 through 7			\$ 32007	\$ 4050	\$	\$	\$ 36057

1970

SCHEDULE 3—DISBURSEMENTS TO OFFICERS (See Instructions, page 2)

Name (A)	Title (B)	Status (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Other Direct and Indirect Disbursements		Total (H)
					Expenses Including Reimbursed Expenses (F)	Other Dis- burse- ments (G)	
1. [Name]	[Title]	[Status]	8656	1040			9696
2. [Name]	[Title]	[Status]	7454	900			8354
3. [Name]	[Title]	[Status]	7210	930			8140
4. [Name]	[Title]	[Status]	7800	1040			8840
5. [Name]	[Title]	[Status]	7541	1060			8601
6. [Name]	[Title]	[Status]	1029				1029
7. Total from Additional Listings, if any			3162	480			3642
8. Totals of lines 1 through 7			\$ 41072	\$ 3300	\$	\$	\$ 44372

29 U.S.C. § 412
L.M.R.D.A. § 102

§ 412. Civil action for infringement of rights;
jurisdiction.

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

29 U.S.C. § 440
L.M.R.D.A. § 210

§ 440. Civil Action for enforcement by Secretary;
jurisdiction.

Whenever it shall appear that any person has violated or is about to violate any of the provisions of this subchapter, the Secretary may bring a civil action for such relief (including injunction) as may be appropriate. Any such action may be brought in the district court of the United States where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

29 U.S.C. § 464(a), (b)
L.M.R.D.A. § 304(a), (b)

§ 464. Civil action for enforcement - Complaint; investigation; commencement of action by Secretary, member of subordinate body of labor organization; jurisdiction.

(a) Upon the written complaint of any member of subordinate body of a labor organization alleging that such organization has violated the provisions of this subchapter (except section 461 of this title) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

Venue

(b) For the purpose of actions under this section, district courts of the United States shall be deemed to have jurisdiction of a labor organization (1) in the district in which the principal office of such labor organization is located, or (2) in any district in which its duly authorized officers or agents are engaged in conducting the affairs of the trusteeship.

29 U.S.C. § 481 (e), (h)
L.M.R.D.A. § 401 (e), (h)

Nomination of candidates; eligibility; notice of election; voting rights; counting and publication of results; preservation of ballots and records.

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to Section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment

29 U.S.C. § 481 (e), (h) -2-
L.M.R.D.A. § 401 (e), (h) (continued)

to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and by-laws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and by-laws of such organization insofar as they are not inconsistent with the provisions of this subchapter.

Removal of officers guilty of serious misconduct.

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and by-laws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such

29 U.S.C. § 481 (e), (h) -3-
L.M.R.D.A. § 401 (e), (h) (continued)

officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and by-laws insofar as they are not inconsistent with the provisions of this subchapter.

29 U.S.C. § 482 (a), (b), (c), (d)
L.M.R.D.A. § 402 (a), (b), (c), (d)

§ 482. Enforcement - Filing of complaint, presumption of validity of challenged election.

(a) A member of a labor organization -

(1) who has exhausted the remedies available under the constitution and by-laws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and by-laws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided), and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and by-laws may provide.

Investigation of complaint; commencement of civil action by Secretary; jurisdiction; preservation of assets.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

Declaration of void election; order for new election; certification of election to court; decree; certification of result of vote for removal of officers.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds--

(1) that an election has not been held within the time prescribed by section 481 of this title, or

(2) that the violation of section 481 of this title may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and by-laws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 481 of this title, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

Review of orders; stay or order directing election.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

29 U.S.C. § 521 (a) (b)
L.M.R.D.A. § 601(a), (b)

§ 521. Investigations by Secretary; applicability
of other laws.

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such person as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this chapter, the provisions of sections 49 and 50

§ 521. (continued)

of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Secretary of any officers designated by him.

29 C.F.R. § 4523
32 Fed. Reg. 18325 (1973)

The interpretation consistently placed on a union's constitution by the responsible union official or governing body will be accepted unless the interpretation is clearly unreasonable.

29 C.F.R. 452.25
38 Fed. Reg. 18327 (1973)

Title IV governs the regular periodic elections of officers in labor organizations subject to the Act. No requirements are imposed with respect to the filling by election or other method of any particular office which may become vacant between such regular elections. If, for example, a vacancy in office occurs in a local labor organization, it may be filled by appointment, by automatic succession, or by a special election which need not conform to the provisions of Title IV. The provisions of section 504 of the Act, which prohibit certain persons from holding office, are applicable to such situations. While the enforcement procedures of section 402 are not available to a member in connection with the filling of an interim vacancy, remedies may be available to an aggrieved member under section 102 of the LMRDA or under any pertinent State or Local law.

revised
Hofm

5:00pm May 22, 1978

